

QA-21392
FHWA-97-2350-6

Mothers Against Damned Deregulation
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Transportation Union against Regulatory Destruction of Society

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ADMINISTRATION
DEC 2 AIO: 12
LEGS./REGS. DIV.

November 20, 1996

Clerk
Federal Highway Administration
U.S. Department of Transportation
400 Seventh St., S.W., Room 4232
Washington, D.C. 20590

Re: Docket No. MC-96-28, Hours of Service Regulations

Dear Sir,

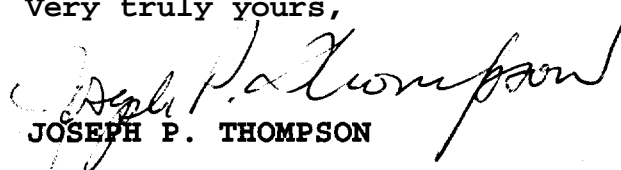
Please add my name to the mailing list in the above-entitled proceeding.

I am a 1967 graduate of the Motor Fleet Safety Supervisor School at UC-Berkeley, and I am a former truck dispatcher for a major LTL motor carrier. I am also a doing post-doctoral research at the Norman Y. Mineta International Institute for Surface Transportation Policy Studies.

Will you please include the enclosed research paper that I wrote to the record in the above-referenced proceeding. I would appreciate receiving any press releases or other announcements or publications regarding this matter.

Thank you for your assistance in this vital subject.

Very truly yours,


JOSEPH P. THOMPSON

Encl.
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PROFITS vs. SAFETY:
A Collision of Reality & Theory
in Transportation Deregulation in California

by

Joseph P. Thompson, Esq.

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*Aftermath of head-on collision between an 18-wheeler
and a Gilroy Unified School District bus.*

October 23, 1995

L. Denno, Chief
Enforcement Services Division
California Highway Patrol
P. O. BOX 942898
Sacramento, CA 94298-0001

Re: Transportation Deregulation and Safety

Dear Sir,

Grassroots organizations like Citizens for Reliable and Safe Highways ("**CRASH**") and Parents Against Tired Truckers ("**PATT**") are in the vanguard of those of us interested in focusing public attention on the carnage ~~on~~ the Nation's highways.

-- On behalf of all concerned parents, students and educators, I am grateful to you for extending to me the opportunity to participate in the Department's regulatory review.

I trust that the response that the Department sends to Governor Wilson will emphasize the importance of the safety foundation without which your Department's mission would become virtually impossible.

As I said to Congressman Norman Mineta last year, in light of the disastrous failure of our experiment with transportation deregulation, I fail to see the wisdom in new federal legislation. It is ~~my~~ earnest hope and desire that this report will be of use in disclosing the ruinous consequences of deregulation of the trucking industry.

Very truly yours,

JOSEPH P. THOMPSON, ESQ.

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DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

P. O. Box 942898
Sacramento, California 94298-0001
(916) 445-3253
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)



October 3, 1995

File No.: 60.11718.066.95-275.AJ

Mr. Joe Thompson
Transportation Attorney
P. O. Box 154
Gilroy, CA 95021-0154

Dear Mr. Thompson:

Governor Pete Wilson has asked all state departments to conduct a systematic review of state regulations to modify or eliminate excessive regulatory burdens on organizations, businesses, and individuals in California. This process is a furtherance of the Governor's efforts to streamline government processes and create the best possible environment for business and economic growth. As the first step in this regulatory review, the California Highway Patrol (CHP) is seeking your input as to any regulations promulgated by this Department, that by nature of restrictions, requirements, or duties imposed or acts prohibited, you feel place an undue burden on you, your organization, or business.

To this end, you are invited to attend a meeting designed to obtain consensus on submitted regulatory reform proposals. This meeting will be held at 444 North Third Street, Suite 3 10, Sacramento, CA, at the date and time specified on the enclosed schedule. Since it is possible that not every proposal will be fully addressed in the time available, we request you provide written responses for submission at the meeting location for follow-up consideration. Similarly, if you are unable to attend the meeting in person, you are invited to send your written responses to the address listed above, Attention: Mr. Greg Alvarez.

We recognize that as responsible members of the highway transportation industry, you share with us a mutual desire for highway safety. Together we realize that elimination of regulations resulting in the reduction of public safety would not only be counter to the general welfare of our citizens, but would have adverse impacts on the trucking industry as well. In line with our joint desire for management and regulation of traffic to achieve safe, lawful and efficient use of the state's highway transportation system, this Department will support regulatory changes that enhance the state's business climate without compromising public safety.

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Mr. Joe Thompson
October 3, 1995
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A complete listing of the regulations subject to this review is attached. If you wish to obtain a copy of a specific regulation, you may contact Barclays Law Publishers, P.O. Box 3066, South San Francisco, CA 94083 or call (415) 244-6611. If you have any questions regarding this matter, please call Mr. Greg Alvarez at (916) 445-1 865.

Sincerely,



L. DENNO, Chief
Enforcement Services Division

Enclosure

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THE ISSUE

Regulation, deregulation, or reregulation of our transportation modes is nothing less than the application of law to an essential human need. As much as our laws can affect behavior, they reflect our goals, e.g., freedom, efficiency, safety, etc. Regulation of transportation for the public good deserves frequent re-analysis. As we contemplate changing our laws, we owe the subject the highest level of concern lest we adopt policies that backfire and make problems worse rather than better. As Mr. Justice Holmes wrote in The Common Law:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.

THE PROBLEM

The Tenth Amendment reserves to the States those powers not expressly delegated to the federal government. Historically, the Supreme Court has construed the Commerce Clause throughout most of our history in such manner that the States regulation of transportation is upheld so long as it does not impose undue burdens on commerce. It has long been held that interstate motor carriers are required to comply with state highway safety rules. For example, it has been held that a state's highway weight maximum law does not violate the commerce clause. Sproles v. Binford, 286 U.S. 374. Similarly, other state highway safety laws have withstood attack on commerce clause grounds, e.g., Welch v. New Hampshire, 306 U.S. 79 [drivers' hours of operation law upheld]; Maurer v. Hamilton, 309 U.S. 598; South Carolina v. Barnwell Bros., 303 U.S. 177 [weight and size regulations upheld]. The states' police powers include regulation of highway carriers. Hendricks v. Maryland, 235 U.S. 610; Kane v. New Jersey, 242 U.S. 160; Carlisle v. Hamilton v. Snook, 281 U.S. 66 (California regulation upheld); Duke v.

Michigan, 266 U.S. 70 (Michigan regulation upheld); Continental Baking Co. v. Woodring, 286 U.S. 352 (Kansas). State regulation is valid unless it encroaches upon the "federal field." Buck v. Kuykendall, 267 U.S. 307. so, state regulation must not be arbitrary or unreasonable use of police power, or used in such a way as to unduly burden interstate commerce. Minnesota v. Barber, 136 U.S. 455. Interstate commerce, by definition, includes foreign commerce, e.g., Mexican and Canadian trade. 49 U.S.C. 110501. So, under traditional analysis California has authority to preserve the health and safety of its residents and especially its highway users.

THE EXPERIENCE

On August 2, 1994 the Governor transmitted the 1993 Department's Annual Report to the public in which the following tragic facts were summarized.

1993 California Quick Accident' Facts

During 1993, California had a total of 477,490 traffic accidents; 3,678 fatal, 202,656 injury and 271,156 property damage only.

A traffic accident was reported every 1 minute and 6 seconds.

One person was killed every 2 hours and 6 minutes as a result of a traffic accident.

One person was injured every 1 minute and 40 seconds as a result of a traffic accident.

Children under the age of 15 accounted for 32.6% of pedestrian victims and 37.6% of bicycle victims (victims killed and injured).

For each person killed there were 76 persons injured.

Speed was indicated as the Primary Collision Factor in 23.8% of the fatal and injury accidents.

Within the last five years, motorcyclist victims killed have decreased 51.1% from 620 in 1989 to 303 in 1993.

Alcohol involved fatal accidents have decreased 38.0% and alcohol involved persons killed have decreased 37.5% within the last five years.

Of the licensed drivers in California, 25.4% were under 30 years of age; however, drivers under 30 years of age comprise 38.8% of all drivers in fatal and injury accidents.

One out of every 7,625 persons living in California was killed in a traffic accident; one out of every 101 persons was injured; and one out of every 54 licensed drivers was involved in a fatal or injury traffic accident.

As a result of the 3,678 fatal accidents, 4,163 persons were killed for an average of 1.1 deaths per fatal accident.

There were 1.56 persons killed and 118.31 persons injured for every 100 million vehicle miles of travel. (These are more commonly known as the mileage death and mileage injury rates.)

Hit-and-run was indicated in 12.1% of the fatal and injury accidents.

California has not had a day without a fatality since May 1, 1991.

According to the National Safety Council, California's experience is fairly typical of the nation. The 1993 national mileage death rate was 1.8, placing California slightly below the national average. Accident Facts (1994). In 1992 there were 40,800 traffic deaths nationwide, and in 1993 there were 42,000. Id. The mileage death rate remained constant at 1.8 both years nationwide. Id.

VEHICLE DEFECTS IN MOTOR VEHICLE ACCIDENTS

According to the National Highway Traffic Safety Administration, vehicle defects contributed approximately 1.6% of the police-reported motor vehicle accidents in 1993. Of the accidents in which a defect was listed, over 32% were due to a defective brake system. Another 29% were due to defective tires. NHTSA's Fatal Accident Reporting System listed approximately 8% of the motor vehicle accidents in 1992 as attributed to one or more vehicle defects. Of fatal accidents in which a vehicle defect was determined, over half (53.1%) were the result of defective tires. Another 21% were due to defective brakes. The remaining 26% included defective headlights, steering systems, etc. Id.

SCHOOL BUS ACCIDENTS

In 1992-1993, California had 2,404 school bus accidents, of which 1,878 involved only property damage. However, there were 749 pupils injured. Nationwide school bus accidents killed an estimated 90 persons, including 30 pupils and 60 other persons. These national estimates are projected from data received from 36 states and the District of Columbia. Id. Of the pupils killed, about 5 were passengers on school buses and 25 were pedestrians either approaching or leaving a loading zone. About half the pupil pedestrian victims were struck by the school bus there were

entering or leaving. Injuries in school bus related accidents totaled about 16,000 of which 11,000 were students.

ESTIMATED ACCIDENT COSTS

According to the CHP's 1993 Annual Report, vehicle accidents in 1992 cost Californians \$24,820,000,000.00, including fatalities, injuries and property damage. In 1993 the total was \$24,850,000,000.00.

FEDERAL PREEMPTION OF STATE REGULATION

Section 601 of the Federal Aviation Administration Authorization Act of 1994, effective January 1, 1995, was enacted without public debate or substantial consideration of the ramifications of such legislation. Significantly, 1601 FAAAA, codified at 49 U.S.C. §11501(h) (1), prohibits states and local governments from enacting or enforcing any "law, regulation or other provision have the force or effect of law related to a price, route, or service of any motor carrier" of property. With the exception of household goods carriers, trucking rates on intrastate traffic may not be regulated. What are the implications of §601-federal preemption of state regulation of intrastate trucking? What of the Tenth Amendment's reservation of powers for the States?

In 1980 the House Public Works Committee concluded that "increased entry will open the highways to truckers who may have little concern for the safe operation and maintenance of their vehicles, thereby posing a threat to those who share the highways with them." Motor Carrier Act of 1980: Report of the House Committee on Public Works and Transportation, H.R.Rep.No. 96-1069, 96th Cong. 2d Sess., p. 6 (1980).

The past 14 years of the experiment have proven the Committee's prediction to be sadly accurate. Nevertheless, despite the increased carnage and suffering on our highways, Congress has now moved us further down the path toward ruin of our transportation systems. One can only ask: Why? From the viewpoint of people concerned with safety, economic deregulation of the airlines and the trucks has been a worsening failure. How many airline passengers must die before we recognize this fact? How many motorists? This modern carnage is reminiscent of the death and destruction on the railroads before enactment of the Interstate Commerce Act. Kolko, Railroads and Regulation. 1877-1916 (1965).

In considering the Motor Carrier Act of 1980, this obvious danger was also highlighted by the minority report of the Senate Commerce Committee:

We believe one of the most persuasive arguments against deregulation is that compliance with safety standards will likely suffer. The Bureau of Motor Carrier Safety of the Department of Transportation has found that regulated

carriers have a lower accident rate than exempt carriers. Accidents involving exempt carriers are also more severe than those involving regulated motor carriers, according to BMCS data. The severity of property damage for exempt truckers is \$15,000 per accident, nearly twice the property damage per accident for regulated motor carriers.

The study by Dr. D. Daryl Wyckoff [of Harvard University] certainly shows a definite correlation between regulation and safety. Wyckoff found that company drivers in the regulated sector of the trucking industry have a safety and compliance record which is substantially and consistently superior to the exempt carrier. Wyckoff's survey of thousands of drivers found that company drivers in the common carrier sector compared to exempt owner-operators have:

- A lower average cruising speed;
- Lesser incidence of keeping multiple log books;
- Lesser incidence of regularly exceeding the driving hours' limits;
- Fewer moving violations per 100,000 miles; and
- Fewer reportable accidents per 100,000 miles.

In addition, Wyckoff found that exempt for-hire carrier drivers were found to be involved in more than three times as many accidents per hundred-thousand miles of travel as drivers for regulated motor carriers.

Motor Carrier Reform Act of 1980: Report of the Senate Committee on Commerce, Science and Transuortation. S.Rep.No. 96-641, 96th Cong. 2d Sess. p. 85 (1980).

The Committee had ample evidence in 1980 of the correlation between deregulation and decreased safety, and we have undoubtedly received more since then. Accidents increased from 25,666 in 1976 to more than 34,000 in 1978, while truck driver fatalities increased from 717 to 962 during the same period. Between 1977 and 1980 more than 10,000 highway deaths resulted from accidents involving medium and heavy commercial vehicles. Such accidents grew at double the rate of increased truck miles traveled. **Economic Regulation of the Trucking Industry: Hearings before the Senate Committee on Commerce, Science and Transportation.** 96th Cong., 1st Sess., p. 339. As Professor Dempsey has repeatedly pointed out, this increase occurred while the ICC administratively deregulated the trucking industry by granting over 98% of operating authority applications. Dempsey, **The Social and Economic Consequences of Deregulation: The Transuortation Industry in Transition.** (New York: Quorum Books 1989), p. 30 (hereafter "Consequences of Deregulation").

Thus, the definite correlation between absence of safety and unregulated sectors of the trucking industry have been well documented, yet Congress continues to further deregulate all

segments of the transportation industry. We can only ask: What is the explanation for this? Who gains? Who suffers?

As Professor Dempsey has said, this tends to confirm the perception that expansion of the commercial zone exception to the Interstate Commerce Act has made our cities dumping grounds for unsafe equipment, and that haulers of exempt unprocessed agricultural commodities are not the best-trained and do not operate the safest trucks. The Department of Transportation, which holds primary jurisdiction over motor carrier safety, has no practical means of locating exempt carriers in order to evaluate their compliance with safety standards. Consequences of Deregulation, p. 31.

Regardless of the evidence, however, Congress continues to deregulate our transportation industries. Instead of pushing the regulatory agencies to perform up to the public's expectations of them, we have slashed their budgets. The Congress has decided to eliminate the ICC, and the Legislature is considering legislation to remove all motor carrier regulatory responsibilities from the PUC and transfer them to the CHP, without replacing the lost manpower required to enforce the laws.

We must ask: Why will we sacrifice safety for profits? Does society gain enough in decreased freight rates to offset the costs associated with increased traffic deaths and injuries? It is no wonder that carnage on the highways mounts, while we permit laissez faire attitudes to govern the conduct of the regulators.

Should the Governor be informed that we will accept regulatory changes that sacrifice safety of the motoring public so that we can have lower freight rates, with foreign nationals hauling freight on our highways without paying any taxes for the privilege?

The ICC's principal means to insure carrier safety rested in its power to withhold or revoke operating rights. Removing the threat from the regulators' powers plays right into the attitude that we now tolerate an anything goes attitude of free trade without regard to safety. Why have a speed limit? Why impose regulations or rules if we will not enforce them?

Should we report to the Governor that we accept the cost-benefit analysis like the management at Ford Motor Company who ignored the engineers' report that without protection gas tanks would explode in a predictable number of cases, burning the Pinto occupants? Should we tell him that we accept the human suffering and death that unrestrained big rigs will bring to our State while they deliver the goods for our economy. Is this an example of an Unfunded Federal Mandate?

Recent experience in our States has shown that the USDOT's efforts are so bad that they even give satisfactory safety ratings

to carriers that state officials have ordered off the highways because of numerous and chronic safety violations. The ever-increasing number of proprietary fleets and owner-operators live by the motto: "DO IT! (As long as you can get away with it)." And this is our American trucker; wait until we get the full impact of the NAFTA implementation regulations!

According to the proponents of deregulation, the immediate impact of regulatory reform will be significantly increased competition. Such an increase was immediately felt by the airline industry shortly after the promulgation of the Airline Deregulation Act of 1978. In fact, competition reached such an extreme that net losses for the last quarter of 1979 and first quarter of 1980 totaled \$500 million--the worst in the history of U.S. aviation. Consequences of Deregulation, p. 31.

As Professor Dempsey states, one of the dangers of poor or nonexistent profits for an industry such as transportation is the natural tendency of management to curtail costs; and among those which can be significantly diminished are maintenance costs, including mechanics' wages, spare or replacement parts, and idle vehicle time during inspection and maintenance. This was already the case in the railroad industry where, because of a chronic period of unsatisfactory profits, deferred maintenance became a serious concern.

The problem of deferred maintenance now seems to have afflicted the airline industry as well. In 1979, the FAA recovered or attempted to recover \$1.5 million in maintenance fines from Braniff, \$385,000 from PSA, \$166,000 from Prinair, \$500,000 from American, and \$100,000 from Continental. The fact is, airline economics are such that it is difficult to keep a jet on the ground because a \$50 replacement part is unavailable, when that jet in the air could realize \$50,000 in gross revenue, the danger to life notwithstanding. Further, the CAB, in its haste to deregulate the airline industry, has exacerbated the safety problem by so diluting the fitness criteria as to make them effectively meaningless.

What will this mean for motor carriage? The ICC, as Professor Dempsey predicted, pursued an analogous course and diluted the fitness criteria. Now, even though 54,000 people have been killed in the United States in the past ten years in truck-related accidents, and more than 1,000,000 injured, Congress has ended all hopes of effective ICC regulation and pre-empted the states from regulating the trucking industry! If we deregulate (nullify) enforcement branches of the ICC and PUC to save money, are we actually causing costs for taxpayers to increase because injury and death and property damages will increase more than the freight savings we attain? Will the DOT now protect the public from unsafe operators? How can the CHP do its traditional job, plus the PUC

duties too?

Should we explain to the Governor that there is a dangerous confluence of trends that threatens our safety? Increasing population, highway congestion, vehicle size (57-ft.) and weight (134,000 lbs on some freeways serving ports with container traffic), with possible introduction of triple-short trailers and double-long trailers on our highways, and NAFTA induced Mexican and Canadian trucks, all bode for trouble as we see the turn of the century.

Should we begin with the CHP itself, and question why the Commissioner waives the hours of service laws for drivers so that the crops can be brought to market? Is this the example that we want the Governor to follow, sacrificing safety for profits?

Dramatically increased competition may well cause carriers to cut costs and, as in the rail and aviation industries, defer maintenance. In essence, lives may be lost unnecessarily as a result of these Congressional and Legislature deregulation law changes. Id.

When you sacrifice safety for shippers' profits, what price does society pay? Professor Daryl Wyckoff found a positive correlation between motor carrier regulation and safety; regulated carriers displayed a superior safety and compliance record vis-a-vis unregulated motor carriers. Approximately 4,500 people died in accidents involving heavy trucks in 1986. Odds are 40 to 1 that the car occupant rather than the truck driver will die in these highway catastrophes. An overwhelming body of evidence suggests that trucking safety has deteriorated sharply since deregulation started in 1978. Id., Ch. 7 Safety-Motor Carriers, p. 120.

Motor carriage does not operate in a purely competitive environment. Large shippers enjoy and exert monopsony power--the ability to dictate pricing discounts unavailable to smaller rivals. Hence, small shippers become saddled with the fixed costs of operation. That disparity of bargaining power (which demands pricing discrimination), coupled with unlimited entry (and the glut of capacity resulting therefrom), has made it difficult even for well-managed and efficient motor carriers to earn a reasonable return on investment. The losses have to be borne by someone. They have come out of the hides of labor and investors, and from deferred maintenance. Drivers must now drive longer hours to earn the same income. Firms with inadequate profits lack the resources to invest in new equipment, or repair aged equipment. As a consequence, trucking accidents have soared under deregulation. Virtually every objective study of highway safety has concluded that the rate of truck-related accidents, fatalities, and injuries has increased dramatically since deregulation began, at a pace higher than the increase in truck miles traveled. Id., at p. 121.

A study commissioned by the American Automobile Association concluded that because there are few other areas in which to cut costs, motor carriers whose profit margins are squeezed have little alternative but to "run older equipment, pay less in wages, work drivers longer, and/or skip on maintenance." Professor Glaskowsky reached similar conclusions, noting that "after five years of deregulation three trends are fairly clear: (1) the equipment fleet of the motor carrier industry is aging; (2) a lot of maintenance (expense) is being deferred; and (3) the motor carrier accident rate is increasing." Id.

Indeed it is. Because carrier profits have been so severely squeezed, the average age of equipment on the highways has increased dramatically since deregulation. In 1978, when de facto deregulation began, the median age of trucks operating on the highway was six years; by 1986, that had risen to 7.5 years. Economically distressed carriers simply haven't the resources to invest in replacing (and in some instances, repairing) aged equipment. As Professor Garland Chow observed, "the carrier which eventually goes bankrupt spends less on safety and maintenance, has older equipment and depends on owner operators more than carriers not going bankrupt. As these financially distressed carriers approach their eventual demise, they spend even less on safety [and] new equipment." Id.

It is not only the carrier exiting the unregulated market which poses a serious safety hazard on the highway. New, under-capitalized, shoe-string operators who naively believe that they can compete in the "big leagues" are also a threat.

Professors Corsi and Fanara, Jr., examined the impact of the Motor Carrier Act of 1980 upon safety and concluded that new entrants have accident rates between 27% and 33% higher than established carriers. Id.

As wages are reduced by financially strapped carriers, drivers have a strong economic incentive to stay on the highway beyond the maximum hours established by the federal government, sometimes pumped up on amphetamines. The result has been sharply increased rates of trucking accidents and related deaths and injuries. Daust and Cobb found a "relationship between federal economic deregulation and the substantial rise in safety related incidents and well as cause-and-effect relationship of driver fatigue and unqualified drivers on traffic crash occurrences." Id.

An AAA study reveals that driver fatigue is the probable or primary cause of 41% of heavy truck accidents. As one driver noted:

In 10 years of driving I have had no employer who expected less than twice the legally allotted number of hours. Many drivers . . . must constantly break the law to keep their jobs. The resulting fatigue is the truck

driver's real enemy and the true killer on the highway . . . If the same official zeal [over drug abuse by drivers] were focused on shippers and employers who demand outlawry from drivers, the first step will have been taken toward reducing [the number of truck-related fatalities]. Until then, shippers will expect 68-hour trips from California to Boston, and profit will be made because drivers disregard the law. More important, public safety will continue to be jeopardized.

The Bureau of **Motor** Carrier Safety of the U.S. Department of Transportation reported an 18% increase in trucking accidents from 1983 to 1984. That is the largest increase since 1972. Id.

The American Insurance Association reports that the accident rate for interstate motor carriers increased from 2.65 per million miles in 1983 to 3.06 in 1984, and to 3.39 in the first half of 1985. Fortune magazine found that both the age of trucks on the highway and the number of truck accidents have soared since promulgation of the Motor Carrier Act of 1980, and reached these conclusions:

The growing safety problem is a lesson in the perils of deregulation . . . Deregulation compounded the problems [of highway safety] by creating economic circumstances that made trucking far more dangerous. Price competition forced hundreds of large and medium-size companies out of business. The smaller outfits and independent **owner-**operators who took their place are nimbler, but these new entrants have a hard time making money . . . To stay in business, the small operator must run each rig at least 120,000 miles a year--more than 300 miles every day . . . In today's competitive climate, the numbers often do not add up . . . Result: **Many** hard-pressed truckers have plenty of incentive to spend excessive hours at the wheel and to overlook expensive maintenance requirements. . . . [A]s many as one in three long-haul drivers resort to illegal drugs to help cope with grueling hours on the road. . . . **Even** a drug-free driver may be a menace on the highway because of the sorry condition of his vehicle. Roadside inspections conducted in various states in the past year regularly turned up serious problems in 30% to 40% of trucks pulled over.

Nationwide surveys performed under the Federal **Motor** Carrier Safety Assistance Program concluded that of the 366,400 trucks checked in 1985, 29% were insufficiently safe to drive on the highway. In 1986, safety inspectors in New York and Connecticut, operating under the federal program, ordered as many as 60% of the trucks off the highway as unsafe. Professor Beilock, after surveying truck drivers in Florida, reached the following conclusions:

Compared to those who see less difficulty, almost six times as many drivers responded that it has become more difficult to drive safely since 1980, the year the trucking industry was legislatively deregulated under the Motor Carrier Act. Although many reasons are given for increased difficulty, an appreciable number are symptoms of root causes connected with deregulation. Reasons which are or potentially deregulation-related are mentioned quite prominently by the 85 percent who specified a reason or reasons.

Each of these independent studies points to a common conclusion: there has been a significant deterioration in the level of safety of motor carriers since federal deregulation began. Id.

There are reasonable grounds to believe that rate deregulation and safety deterioration are interrelated. As was revealed by Professor **Glaskowsky's** comprehensive study on the impact of deregulation upon motor carriers:

Many aspects of deregulation are subject to disagreement and debate as to their effects, but safety is not one of them. Safety costs money where transportation operations are concerned and it was inevitable that deregulation would put much financial pressure on many motor carriers. Corners are being cut by financially strapped carriers and the accident rate is rising. This was a clearly foreseeable consequence of deregulation.

Equipment maintenance is another major factor. Firms without adequate returns simply haven't adequate resources for such continuing maintenance items as brakes and tires. In recent years, state inspections around the nation have seen a dramatic increase in the number of trucks pulled out of service as unsafe to be on the highway because of illegal vehicles or drivers. Moreover, the average age of trucks on the highway has grown steadily every year of federal deregulation. The bottom line is that the principal cause of the deterioration of safety under deregulation is the economic anemia unleashed by overcapacity and the market power of large shippers. Id.

In the wake of Congress' new enactments in Washington, e.g., the Negotiated Rates Act of 1993, which eliminated the vast majority of undercharge revenues for carriers; the Trucking Industry Regulatory Reform Act of 1994, which practically abolished Western Civilization's 2,000 year-old **common** carriage doctrine and prohibited the states from regulating the trucking industry, etc., how much worse will Professor Dempsey's findings prove to be, especially in view of the NAFTA implementation regulations adopted by the ICC?

We should ask the Governor to reconsider Professor Dempsey's analysis and conclusions:

Take a typical large manufacturer with a private fleet subsidiary of its own trucks and trailers. It will make sure that this subsidiary will earn a reasonable return on investment sufficient to allow it to maintain its equipment so as to avoid the potential liability that would be inspired by shoddy maintenance and overworked drivers. Now, suppose the largemanufacturer tenders some freight to a common carrier. It has no incentive to ensure that the common carrier earns a reasonable return on investment, for any highway accident becomes a liability problem for the carrier, not the manufacturer. Instead, the manufacturer has an incentive to cut the common carrier's profit margin to the bone so as to maximize its wealth, the public be damned! With its own private fleet, the manufacturer cannot externalize the price the public pays for its greed, in terms of injuries and fatalities on the highway; with a common carrier, it can. So to avoid the spillover effects upon third parties not participating in the transaction for either the sale of transportation services or the goods the manufacturer sells in the market, responsible regulation is required.

Moreover, even if litigation were somehow able to force internalization of the injury innocent human beings bear (and for the reasons just expressed, it is not), litigation would be a poor alternative to regulation in that courts award monetary relief; even a generous jury award for damages cannot restore lost health or life. In contrast, regulation can prevent injury before it occurs, and this is a significant benefit indeed.

Targeted safety programs help. But unless the state is prepared to put highway patrol officers in every cab, it cannot hope to thwart the economic imperatives of inadequate returns mandated by deregulation.

Too many of use have seen the crushed accordions of twisted steel and bent chrome on our interstate highways that were passenger automobiles before they were squashed by huge diesel-powered trucks pulling giant trailers. The kinetic energy released by a 40-ton tractor-trailer unit moving at 55 mph is approximately 16 million foot-pounds, or about 4,000 times the energy released by a high-powered rifle. It is quite capable of compressing a compact car into a glob of steel almost the size of a suitcase.

One source reports that "virtually all studies of accident, fatality, and injury rates found that rates are increasing more for trucks than for other types of vehicles and at a pace higher than the increases in truck miles traveled." An overwhelming body of evidence demonstrates that **the motor** carrier industry suffers from critical economic anemia under deregulation and that truck-related carnage on the highways has soared since the early 1980s.

Despite the evidence, some deregulation proponents dogmatically insist that no one has proven conclusively that economic deregulation causes safety deterioration. One is reminded of the argument by tobacco companies that no one has established a conclusive link between cigarette smoking and cancer.

No one has been able to step forward with conclusive evidence to prove (or for that matter, disprove) either proposition. Nonetheless, public policy suggests that the burden of proof ought reasonably to be placed on the constituency which, common sense suggests, is harming innocent people.

Simply put, if a carrier hasn't the economic resources to replace worn equipment, it will have little choice but to defer maintenance, leave the truck rolling on the highway, and hope the next load or two will improve its economic position. This, indeed, was the explicit practice of the unhealthy railroad industry. The economic imperative of survival in the Darwinian market suggests the same for the unhealthy trucking industry under deregulation. The fact is, human beings are being maimed and killed in increasing numbers in truck-related accidents on our highways.

Only a change in the economic lot of carriers will improve highway safety. Not until motor carriers earn a reasonable return on investment will they have the resources to maintain their equipment properly, or replace it with newer trucks. Not until drivers earn a decent living will they be spared endless hours behind the wheel pumped up on amphetamines. Prudently administered economic regulation can, by controlling **entry**, construct excess capacity and thereby enhance carrier productivity. By regulating rates, it can ensure that efficient and well-managed carriers earn a return on investment sufficient to maintain and upgrade equipment to safe levels. By holding the Damocles sword of license revocation over their heads, the regulatory commission can ensure that sufficient resources are spent to enhance safety. Id., pp. 123-125.

Now since Professor Dempsey wrote this brilliant, lucid analysis, Congress has seen fit to destroy what Mr. Justice Brennan described as "utterly central" to the nation's commerce. Maislin Industries, U.S. Inc. v. Primary Steel, Inc., 497 U.S. 116, 110 S.Ct. 2759, 111 L.Ed.2d 94 (1990). It has prohibited the States from exercising their traditional transportation regulatory powers under the Tenth Amendment.

Should we ask the Governor if he adheres to the currently popular idea that "deregulation" is good no matter how much harm it inflicts. The absence of law is anarchy. Business and commerce worst enemy is instability. Deregulating long-established law, e.g., the ICA, is welcome news for litigators and bankruptcy attorneys, but it is not good for business, especially small businessmen. Of course the same is true whenever government fails to enforce the law, e.g., the Elkins Act, as we saw in the "undercharge crisis." The deception practiced under the guise of "deregulation," which equates to depriving the public of the rule of law, encourages instability, increases costs, and causes higher business insolvency rates. Law enacted by earlier generations of Congressmen and Assemblymen may be labeled "burdensome regulation," but is it so? By whom? Why?

If law is burdensome, maybe it is for a good reason. For example, uniform laws such as the Uniform Commercial Code, which has been adopted in all States, form a solid foundation so that business and commerce may have predictability for transactions in the marketplace. The UCC rests many provisions on the historic bill of lading, which is not defined by the UCC, but rather, by the ICC-authorized National Motor Freight Classification. The demand for such stability is illustrated by the current work to create a uniform NAFTA bill of lading by industry and government.

Therefore, it is important we send the Governor a clear message that safety in transportation cannot be divorced from a carrier's rates. They are inseparable elements in the carrier's balance sheet. If his rates are depressed to the point of destructive competition, we will see a corresponding decline safety measures and equipment. We should tell our Governor that as our California State representative to raise his voice against destructive federal preemption. Federal Preemption Legislation will do to fundamental transportation and commerce law in the Nation what the terrorists' bomb did to the federal building in Oklahoma. Please tell the Governor to tell Washington we do not want that to happen.

To show our outrage at Congressional interference with our traditional Tenth Amendment rights, we should urge the Governor to see that California joins with its sister States in the pending appeal in Oklahoma Corporation Commission, et al. v. United States, et al., No. CIV-94-1999-R (W.D. Okla., Dec. 30, 1994), to challenge and defeat the unconstitutional assault on the States' historic

right to protect their citizens' health, safety and welfare. However, the Tenth Circuit Court of Appeals has upheld the trial court's decision rejecting the States' challenge. Kelly v. U.S., ___ F.3d. ___ (1995), Nos. 95-6000 and 95-6033. We must tell the Governor to send Congress a clear message that deregulation need not be tantamount to anarchy, but rather, business and commerce require that we preserve the stability of long-cherished, hard-fought victories of earlier generations. Congress ought not to hide its oversight failures by espousing "deregulation" to rid us of "burdensome" rules and unfunded federal mandates. Instead, Congress ought to cast out the political spoils system which caused the regulatory agencies to be run by unqualified persons who failed to properly administer the law. Fellmeth, The Interstate Commerce Omission (1970).

Please report back to the Governor that federal failures must not be the basis for depriving the States of their historic rights to protect the health, safety and welfare of their citizens, especially on our highways.

THE DEREGULATED TRUCKER: ANATOMY OF VEHICULAR MANSLAUGHTER

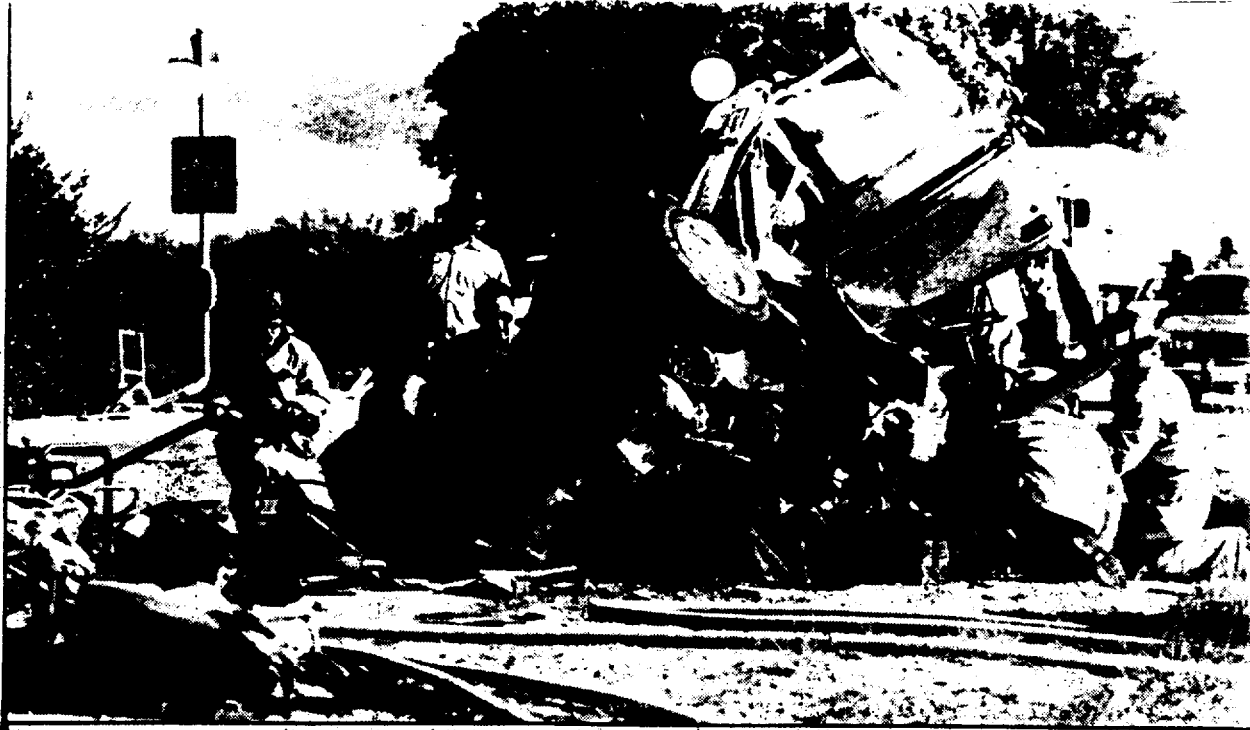
The Appendix to this report is the tragic story of a deregulated, desperado, a "dirt-hauler," a product of our government's current transportation deregulation policies. How many such tragedies must be repeated before we will wake-up to the truth: Deregulation in transportation does not benefit society in general. Its benefits for large shippers is far outweighed by the price paid by accident victims, insurance rate-payers, small businessmen, carriers and shippers, who lack the economic muscle to reap the Robber Barons-type fruits arising from enconomies of scale that only a few, privileged corporate conglomerates can attain. We should not ask "if" such tragedies will recur, but rather, realize that so long as transporation deregulation policies are retained, it is only a matter of "when" and where such accidents will happen.

CONCLUSION

More people have been killed in truck-related accidents during deregulation of the motor carrier industry than all the Americans killed in Viet Nam!

When Ford Motor Company designed the Pinto and decided against installing a modest fuel tank deflector, electing instead to have a certain number of people burned to death each year, or horribly charred in rear-end fuel tank explosions, they were damned for their inhumanity. Since Congress has decided to forego safety on our highways so that Fortune 500 shippers can have larger profits, then why should the Congressmen be considered any differently?

If we as a nation save \$1 billion on freight charges a year under deregulation, but suffer \$2 billion in increased death and medical expenses, how are we better off? How much have the State and Federal treasuries lost in tax revenues from the thousands of motor carrier bankruptcies? How many people have lost their pensions due to these insolvencies? How many cities, towns and municipalities have lost significant portions of their tax revenues due to these insolvencies? How many other businesses (the vendors of trucking companies) have suffered financial losses from the carriers' insolvencies? We must urge the Governor to see the error of deregulation and return the nation's carriers to the safety and stability of regulation.



TINA BARNES/Chief Photographer

Firefighters look for a way to extricate an injured driver pinned in the wreckage of his car.

Three killed as big-rig plows through pack of seven cars

► **The truck driver, allegedly under the influence, is facing murder charges**

By Jed Logan/Staff Writer

GILROY — A San Martin big-rig driver who was high on crank is facing murder charges for plowing into a pack of cars on Highway 101 killing three people and injuring seven others, the California Highway Patrol said Tuesday.

George Thomas Grifall, 31, of 15220 Llagas Avenue in San Martin, was arrested on suspicion of vehicular manslaughter, three counts of second degree murder, driving under the influence of a controlled substance and driving on a suspended license, the CHP said.

Grifall is currently being held in Santa Clara County Jail, the CHP said. He was not injured in the crash.

The names of the two men and one woman killed in the crash were not released by the CHP pending notification of their relatives.

Two helicopters were called in

to take injured motorists to nearby hospitals. Two people were flown to the trauma unit at Santa Clara Valley Medical Center and two others were flown to San Jose Medical Center, the CHP said.

Names of people injured and killed in the crash are expected to be released sometime today. The CHP said they would not be able to have names available of the injured until late Tuesday or early today.

While the majority of the injuries were not serious, one motorist is reportedly in critical condition, the CHP said.

The damage at the scene was so extensive that even veteran patrol officers and rescue workers could be seen just taking their heads as they saw several large lumps of twisted metal scattered across Highway 101 that were once cars.

"I've never seen a car balled up as small as this one. It looks like the bi-rig just ran right over it," said Davies, commander of the Hollister-Gilroy Highway Patrol office said.

The 3 p.m. accident happened about a half-mile south of the Highway 101 and Highway 25 intersection when a big-rig driven by Grifall smashed into a

pack of seven slower moving cars, the CHP said.

The cars were slowing down because of road construction in the slow lane of northbound 101. But Grifall, who was reportedly driving at about 70 mph never slowed down, the CHP said.

According to eyewitnesses Grifall's fast moving brown and orange "dump" truck crashed through the pack of cars, either sending vehicles careening off the roadway or left them crumpled like balls of aluminum foil.

"All I saw was a big burst of things flying into the air, it looked like an explosion as the truck ran into four or five cars," motorist Mike Nishinaka of San Jose said.

A mile-long stretch of northbound 101 was closed to give emergency crews a chance to clear wreckage and remove motorists trapped in their vehicles.

Closing off the northbound lane turned into long delays for motorists in the rush-hour commute as traffic in the northbound lanes of 101 were backed up for about four miles.

Five or six CHP officers are investigating the accident, compounding the normal reporting procedures, the CHP said.

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Deadly crash leaves neighborhood grieving



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and visit the Monterey Bay Aquarium. The truck ran over their car first.

"It's not like the truck driver said, 'I'm going to kill Dan and Dixie,'" Richard Doss said, as he stood in the family's back yard, surrounded by his brothers, other relatives and neighbors. "But it was with complete and utterly callous disregard that he was out there driving around like that. We couldn't even recognize our Mom and Dad."

"But we knew where Mom was sitting," said Laurence Doss, "her hair was still in the glass."

Dan and Dixie Doss were newly married teen-agers when they drove out from Joplin, Mo., in 1961. His first job in Santa Clara County was, literally, digging ditches. But it was with his carpentry skills that Dan hoped to make his mark.

They eked their way into the home on Mary Alice Drive in 1969 and set about building the kind of family that we'd all like to have. The boys' high school friends all hung out at the Doss home. There were fishing and camping trips. The house filled with Dan's custom carpentry work, the back yard with Dixie's plants and flowers.

"Our whole family was love," said Danny Doss, "on Mom's side and Dad's side. But our family felt like the hub. You've never seen so many people get together for Christmas and other holidays."

Said Laurence, "I never wanted to be anybody but like them. My friends said the same thing. They wanted to be like my parents."

Said Richard, "They were as honest, awing, loving, giving, and hard-working people as I've ever



JIM TROTTER

known in my whole life. I was so proud."

"It's hard for me to think about my buddy gone," said Jim Monahan, Dan Doss' partner in the city's carpentry shop. "What a great friend. He always put himself aside for other people. When anyone was sick at work, it was Dan who went to visit. He made time. My own Dad died quite a few years ago and he was almost like that to me."

"I was brought up to forgive," said Monahan. "I feel bad for the kid who did this and for his father. It's just that what he did was so horrible."

Said neighbor Jim Zahiralis, "I didn't understand how close we were, but this hit me like my own mother's death, the same feeling. They were wonderful people."

Dan and Dixie Doss were, by all accounts, wonderful people.

And it is important to say why they were lost. By his own record, George Grifall was bad news behind the wheel. The wider question-of responsibility is how he managed to keep driving. I have no doubt that expressions of sympathy are genuine. But that doesn't change a thing.

Write Jim Trotter at the Mercury News, 750 Ridder Park Drive, San Jose, Calif. 95190; phone (408) 920-5024; or fax (408) 288-8060. Send Mercury Center e-mail to TrotterJim.

an and Dixie Doss lived on Mary Alice Drive, where many of their neighbors considered them family.

SPECIAL TO THE MERCURY

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SUNDAY

OCTOBER 22, 1995 F

San Jose Mercury News



JIM TROTTER

Deadly crash shows system didn't work

Mary Alice Drive is a pleasant, tree-lined street of older tract homes on the east side of Los Gatos. The people who live there know and help each other. They care what happens along the street, where many of them have lived for a quarter-century or more.

At the center of this neighborliness, old-timers and newcomers alike agree, was the Doss family — Dan and Dixie, and their three sons who grew up there, Richard, now 33, Danny, 32, and Laurence, 26.

"Dan and Dixie have been neighbors of mine for 26 years, and Dan has been like a son to me," said longtime resident Bill O'Hara. "He was there any time I needed him. He had a key to my house."

I tell you all this as a basis of understanding. When Dan, 52, and Dixie, 51, were killed in a horrific traffic accident on Oct. 10, a huge hole was ripped in the heart of the neighborhood.

"We want people to know that they were real people with children and neighbors who loved them," said neighbor Karen Zahralis, "and because of some idiot in a truck who shouldn't have been out there, they have been taken away. We want others to understand what has been lost here."

AFTER MEETING Dan and Dixie's sons and other members of the family, after talking to neighbors and with men at the city of San Jose carpenters' shop, where Dan was a master hand, I'm not sure I have the words to express what has been lost. But I know that it is important to try.

The easiest thing to understand is the frustration and outrage that surrounds this tragedy, in which one other man, Gary Russell Wright, 52, of Santa Cruz, was killed and seven others were injured. According to the California Highway Patrol, George Thomas Grifall, 31, was driving a fully loaded gravel truck at 65 to 70 mph when he plowed into a line of traffic that was either slowed or stopped for road work on Highway 101 south of Gilroy.

Grifall was arrested on suspicion of second-degree murder, reckless driving, manslaughter, driving under the influence of a controlled substance and driving on a suspended license in connection with this carnage. He also had nine previous convictions of driving on a suspended license. He was charged with slamming his truck into three parked cars in San Jose in August and with hit and run in that incident.

HE IS BEING held in jail without bail for parole violation on a 1993 conviction in Santa Cruz County for possessing drugs for sale.

A spokesman for Grifall Trucking Co., which is owned by George Grifall's family, expressed extreme sorrow over the deaths and injuries, but declined again Friday to say why Grifall — with his record and suspended license — was back behind the wheel.

"What makes it murder rather than manslaughter is if you know there's a high degree of risk involved and you do the act anyway," said Santa Clara County District Attorney George Kennedy, whose office is expected to file charges soon. "If you have someone with a tremendous record, with a number of convictions, someone who has had all kinds of rehabilitation, who has an awareness of what his behavior can lead to, who has been in wrecks before and has been able to see what can happen, those circumstances allow us to convince a jury that the person knew with a high degree of likelihood what could happen."

Dan and Dixie were killed on their 34th wedding anniversary. They had been on a trip to the Central coast to see Hearst Castle

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Boss . . hub of. probe

► **CHP eyes the employer of the driver believed responsible for a US 101 fatal**

By Jason Montiel/Staff Writer

GILROY — While the driver of a big-rig involved in a fatal accident on U.S. 101 has been arrested on murder charges, the CHP may seek to bring charges against the driver's employer for allowing the driver to operate the rig with a suspended license.

But first, the CHP must prove that John Grifall, of San Jose-based Grifall Trucking, knew that his son, George Grifall, of San Martin was driving the rig with a suspended license at the time of the accident on Oct. 10.

"All employers are responsible for making sure their employees are legally licensed," said Capt. Bob Davies of the California Highway Patrol. "We are examining whether the father knew if his son had a suspended driver's license. That is difficult to do, but we are pursuing it."

CHP Officer George Santos said George Grifall owns the 1975 Kenworth truck that was involved in the wreck, but insurance for the rig is held by his father John Grifall.

"Intent is critical," Davies said. "The issue is still being investigated at this point. We do not have any other details to do any filing of criminal

Driver

• Continued from page A1

charges against anyone other than Mr. (George) Grifall."

Davies said if it can be proved that John Grifall knew of his son's suspended license, he could face criminal charges for allowing his son to drive for the family business. John Grifall did not return calls Wednesday evening.

Randy Hey, assistant district attorney, said George Grifall has nine previous convictions of driving with a suspended license since 1986.

In addition, Hey said George Grifall will appear in court in San Jose next Tuesday for a pre-trial hearing on an August accident in San Jose where Grifall allegedly hit three parked cars with a big-rig before fleeing the scene. He faces charges of misdemeanor hit-and-run.

George Grifall is suspected of driving his gravel truck into the back of vehicles that were stopped for construction work on 101 just south of the Highway 25 intersection on Oct. 10.

After that wreck, Grifall was arrested on suspicion of three counts of vehicular manslaughter, three counts of second degree murder, driving under the influence of a controlled substance and driving with a suspended license.

Grifall, who was reportedly under the influence of methamphetamine during the accident, was traveling northbound between 65-70 mph when his rig smashed into the cars. Three people died, while four people were injured.

Grifall was not injured in the accident.

CHP officials are planning to meet with the county District Attorney's Office today to present details on the investigation. "There will be enough information in there to get a filing for the charges he was booked under," Davies said.

CHP Officer Chris Paredes said those who died in the accident include Gary Russell Wright, 52, of Santa Cruz, Daniel Ray Doss, 52, of Los Gatos and Dixie May Doss, 51, of Los Gatos.

Grifall remains in Santa Clara

County Jail without bail following arrest on a parole violation. Hey said Grifall was on parole from a 1993 conviction in Santa Cruz County for possession of drugs for sale. He was paroled last year.

Davies added that two new laws enacted Jan. 1 of this year may help keep George Grifall and other drivers with convictions of driving with suspended licenses off the road in the near future.

The first law allows law enforcement officers to impound the vehicle of a person who is found to be driving with a suspended license. Police must show that the driver knew of the suspended license in order to impound the vehicle for 30 days.

For people found driving with a suspended license multiple times, another law allows officers to seize the vehicle and sell it.

Davies said the CHP will approach the District Attorney's Office about using these laws to seize Grifall's rig, which is still salvageable.

Davies said the local CHP plans to step up enforcement of these two laws as of Nov. 1. He said keeping such drivers off the road is difficult, but added he hopes these laws will make a difference.

"You are just never going to be able to stop the carnage that is caused by drivers with suspended licenses out there," Davies said. "We have to be aggressive on getting these people off the road."

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